In felonious wounding the act may be laid with one or more of several intents. In such cases a charge of one intent will not support a finding of another, but that is not the law here. Such offences it seems to me would most clearly come within Section 176. Here there is something more than intention but it seems that alternative counts of causing hurt in attempted robbery, or in attempted robbery of a car and money, or, alternatively laid, as in attempted robbery of a car or money could all have been properly joined. The demand for money which the jury seems to have believed, was always part of the complete story. I do not think the defence could have been in any way prejudiced by such joinder. There is in my opinion no substance in this point.

Appeal Dismissed.

IN THE ESTATE OF ABRAHAM PENHAS (DECEASED) TAN SOO ENG (WIDOW) v. ISAAC PENHAS.

[Orig. Civil Juris. (Gordon-Smith, J.) Sept. 13, 1949]

[Probate No. 119 of 1946]

Marriage — Marriage of Jewish gentleman and Chinese lady — Consensual Marriage — Succession.

The principal issue in this case was whether the Petitioner Tan Soo Eng is or is not the lawful widow of Abraham Penhas. The evidence was that the deceased a member of the Jewish faith married the plaintiff according to Chinese rites and thereafter lived with and had children from her.

Held, that on the facts the parties had entered into a consensual contract of marriage and that as neither party was incapacitated in law or otherwise from entering into such a contract, the marriage was valid according to the law of the Colony.

Cases referred to: — See APPENDIX.

Claude da Silva, N. A. Mallal and *G. E. N. Oehlers* for the Plaintiff.

John Laycock and *D. Murphy* for the Defendant.

Gordon-Smith, J. : — In this Petition for Letters of Administration against which the defendant had entered a caveat, an issue was ordered to be tried between the petitioner and caveator in the following terms "whether the petitioner Tan Soo Eng is or is not the lawful widow of Abraham Penhas and if the answer is in the affirmative when the said Tan Soo Eng married the said Abraham Penhas." It is a brief and easy question to ask but difficult to answer in view of the facts and circumstances of the case in relation to the law and it is therefore necessary in the first instance to find what are the definite facts.

Briefly, the plaintiff alleges that she married Abraham Penhas the deceased on or about the 25th December 1937 and subsequently bore him two children. Shortly after the occupation of Singapore by the Japanese in February 1942 the deceased appears to have been liquidated by the Japanese.

By her petition she asks for Letters of Administration to the estate of the deceased as his lawful widow. A caveat was entered by the defendant who is a younger brother of the deceased.

Evidence *de bene esse* on behalf of the defendant, of Wing Commander Rev. S. M. Block, the senior Jewish Chaplain to the Armed Forces in the Far East was recorded in October 1947. I will refer to this evidence later together with the other evidence for the defendant.

The evidence for the plaintiff in the main is uncontradicted and cannot be contradicted by the defence because it is alleged that the deceased's family had no knowledge whatsoever of the plaintiff or of her ever having been married to the deceased. The evidence for the plaintiff consists of her own evidence, that of her mother, Sing Peng Neo, Koh Chay Bo Poh, Ng Ah Kia and other witnesses. The story told by the plaintiff and her mother is that in September 1937 an introduction was effected between the deceased and themselves with a view to marriage and this marriage was discussed at a meeting in the Botanical Gardens between them, when there were present the go-between, the plaintiff, her mother, and the deceased. Apparently satisfactory arrangements were made at this meeting and the deceased gave the plaintiff an envelope containing $500.00 suggesting that she and her mother looked out for a house as being more suitable than where they were living at that moment, which was on a second floor over some business premises. Shortly afterwards the plaintiff and her mother found a suitable house at 508, Sims Avenue, and removed there. The deceased came and visited them there and they got better acquainted and an early marriage was suggested. The plaintiff suggested a marriage ceremony but the deceased said that this was not possible in the Jewish Synagogue and on her suggesting a marriage according to Chinese rites and on being supplied with details, the deceased agreed. A day was appointed and a ceremony took place just before Christmas 1937. Both the plaintiff and her mother and another guest who were present have described this ceremony in detail. The deceased had already given the mother $500.00 for the expenses of the wedding and wedding feast. On the appointed

day the deceased arrived with two Jewish friends and an old Chinese gentleman. The ceremony consisted of the bride and bridegroom (the plaintiff and the deceased) standing before the old Chinese gentleman who made some sort of speech referring to the auspicious occasion and then formally asked them separately whether they were willing to become man and wife and they both responded in the affirmative. During this procedure the plaintiff was holding joss-sticks bowing and worshipping. The deceased produced a handkerchief with which he covered his head, raised his right hand and was murmuring something in his own language. After this ceremony the happy couple then paid their respects to and offered the mother a cup of sweet tea in accordance with the Chinese custom. The two Jewish friends shook hands with the bride and kissed her. Following on this ceremony the usual wedding feast took place at which there were about 17 guests. The deceased remained the night there, going to business as usual the next morning. According to the evidence the deceased would spend three or four nights a week at 508 Sims Avenue regularly except when he was away on business trips and this continued right up to the fall of Singapore in February 1942.

On the 12th September 1938 the first child was born (the girl) the birth being duly registered with the Registrar of Births on the following 8th October. A certified extract of this registration was put in as Exhibit "G" which records the name of the father as being "Abbey Phang" and the maiden name of the mother "Tan Soo Eng". The informant was Tan Ah Bah, a neighbour. The father was described as a Ship's Clerk, a Chinese Hokien born Singapore, nationality British, place of birth being recorded as at 508 Sims Avenue. On the 16th January 1941 another child was born, this time, a boy, which was duly registered with the Registrar of Births on the 13th February 1941. A certified extract of this registration was put in as Exhibit "J", the details showing that the boy was born at the D'Cotta Clinic, 26 Hill Street, the home address of the parents having been given as 508 Sims Avenue. The details are similar except that the country of birth of the father is given as Dutch East Indies and his nationality as being a Dutch Subject, the name of of the father is similarly given as Abbey Phang, Trader. There is further evidence of the birth of the girl in that a bill for medical expenses due to the Tan Dispensary was put in as an exhibit, amounting to two hundred odd dollars. This account is dated the 20th September 1948 and is made out to "Mr. A. Penhas" and a receipt dated the 1st October 1938, Exhibit "M" for $40.00 on account is similarly made out in the name of Mr. A. Penhas. Similarly there is a receipt dated the 18th January 1941 for $50.00 for professional services for maternity signed by Dr. D'Cotta. This receipt is made out in the name of A. B. Phang. There is further confirmatory evidence in the form of a Municipal Vaccination Notice, Exhibit "K", dated the 8th October 1938 made out in the name of "Phang" of 508 Sims Avenue and another one, Exhibit "L" dated the 13th February 1941, no name being inserted but the word "male" is given and the address D'Cotta Clinic, Hill Street, and place of residence (508 Sims Avenue). In addition the Rev. Chong Shen Chu, Pastor in charge of the Chinese Christian church of 142 Prinsep Street, Singapore, gave evidence. He first came to Singapore at the end of 1939. The effect of his evidence is that he came to know the plaintiff, who at times attended his church as a third class member. He described the first two classes of membership of his congregation as including only baptised Christians professing Christianity and their children, and the third class as not having been baptised but being "seekers after truth". He visited the plaintiff at her house after he had met her in his church and made enquiries about her in accordance with his duties. He stated that he ascertained that she had a daughter who had already been baptised by his predecessor. On his first visit to 508 Sims Avenue about the middle of 1940 he met the plaintiff's husband there who introduced the plaintiff to him as his wife, and he also saw a little girl whom the deceased introduced to him as his child. Later on, after the birth of the boy, he suggested to them both that the child should be baptised and they both agreed, which was done. The father was not present at the baptism but the mother was. He produced his Register of Baptisms a certified copy of which is put in as Exhibit "U". This shows the Christian name of the child as "Honglet", the parents' names as Abraham Penhas and Tan Sok Geck, their respective nationalities, the father "Jew" and the mother "Chinese", date of Baptism 14th December 1941, the address 508 Sims Avenue, Lorong 35, Geylang, and under "remarks", "Tan Sok Geck alias Tan Soo Eng".

One of the guests at the wedding, Koh Chay Bo Poh, also gave evidence confirming in detail the ceremony that took place.

A Chinese Amah, Ng Ah Kia, who was employed at Sims Avenue before and after the birth of the boy, also gave evidence confirming that the plaintiff's husband was a Jew and that he would stay 3 or 4

nights a week in the house at Sims Avenue. In answer to the Court, she stated "as far as I know he was the master and I was in his employ and Tan Soo Eng was his wife." Other witnesses gave evidence of the deceased referring to the plantiff as his wife one of whom had also been at a celebration party at the house after the birth of the boy in January 1941.

As I have said this evidence for the plaintiff was not and could not be contradicted by the defendant and I am satisfied that the facts as detailed above have been abundantly proved. I was particularly impressed by the evidence of the old mother, a Chinese lady of over 70, who gave her evidence extremely fairly but, as she stated, her memory had deteriorated after and in consequence of Japanese occupation. I have no doubt whatsoever that there were these negotiations for marriage as detailed, that such a marriage took place according to Chinese rites as detailed and that the deceased cohabitated and lived with the plaintiff as his wife and that she bore him two children. The marriage was a happy one and he treated his wife well, paying the rent of 508 Sims Avenue through the mother and providing his wife with sufficient money for the ordinary household expenses, up to the date of the occupation of Singapore by the Japanese and his subsequent liquidation by them.

Numerous letters and postcards from the deceased to the plaintiff were put in as exhibits, extending from the 6th December 1937 at the Runnymede Hotel, Penang, from Medan in 1938, and numerous other places in the Netherlands East Indies and the Cameron Highlands in Malaya. They were produced with numerous envelopes and I have no doubt whatsoever that they were written by the deceased to the plaintiff.

There is also abundant evidence that the deceased introduced the plaintiff as his wife, acknowledged her as his wife and treated her as such and never attempted to deny his paternity of the two children born to the plaintiff.

The evidence for the defence as regards these facts and circumstances was negative, as the evidence of the defendant himself and his sister Flora was to the effect that they had never seen nor heard of the plaintiff prior to these proceedings. Shortly before the fall of Singapore i.e. early in February 1942, the defendant and his sister Flora managed to get away from Singapore taking their old father with them to India and they did not return until after the liberation. There were in the family, during the relevant period the father Rahamin Penhas (since deceased), the deceased Abraham Penhas (born in Baghdad 1897), Flora Penhas born in Singapore 1905 and the defendant Isaac Penhas born in Singapore 1907. There were three other children who are dead and with whom we are not concerned. The father migrated to Singapore about the beginning of this century and established himself very successfully in business. They were all Jews of the Sephardic branch, and it was claimed that they were very orthodox Jews, the father in particular being very strictly orthodox.

In 1936 Abraham the deceased went on a world tour and when in England met a nice Jewish girl whom he wanted to marry but after seeking his father's permission and the father not being satisfied, such permission was refused. According to the defendant, his brother the deceased was very much disappointed at his father's refusal to consent to his marriage. It was not long after his return that he formed this union with the plaintiff.

The defendant and his sister both described in detail their family life, the sister in particular being emphatic that the deceased, except when away on business, never slept away from home and could not have done so without their knowledge. In cross-examination, she stated that the deceased was always called Abraham in full by her father and family and that the deceased was never called Abbey by his friends. Yet on numerous occasions in her evidence she referred to him as Abbey. She described "orthodox" as meaning a Jew who only eats "kosha food" but she could not say whether the bread they ate at home was prepared by Jews.

Apparently the deceased was interested in racing and he was a member of the Singapore Turf Club. It is only natural to assume that, under the circumstances, he would not be anxious to advertise the fact of his marriage to a Chinese lady and would be particularly anxious to prevent such news coming to the knowledge of his father who, I can well believe, would hold very orthodox views on such a misalliance and strongly object thereto. But I find it extremely difficult to believe that he and his brother and sister lived in quite the subjection to the old man as they would have me believe, according to their evidence in this respect. After all, the deceased was a successful man of business of 40 who had been on a world tour and who had already deferred once to his father's wishes in regard to a proposed marriage with one of his own faith, during this world tour.

A lot of the other evidence for the defence was in connection with some efforts by the plaintiff later

in 1942 to obtain financial assistance from the Japanese Custodian of Property who had, apparently taken charge of the Penhas business and property.

There is no doubt in my mind that she attempted to obtain such assistance and was assisted to some extent in her efforts by Chua Lye Swee a past and present employee of the Penhas business and who at the relevant time lived fairly near Sims Avenue. She certainly produced a type-written letter in English, Exhibit D. 1, to the Custodian in June 1942 to which she had put her thumb impression and a statement was recorded at the office of the Custodian (Exhibit D. 2) as to the facts and circumstances of her claim to be entitled to some financial assistance from the proceeds of such property. Who drew up this letter is not very certain. The plaintiff says that Chua Lye Swee had it prepared for her signature and that he produced it to her after she had seen him about this relief and that he took her to the Custodian with it. Chua Lye Swee denies all this entirely and there is a distinct conflict in this respect. In any case, I do not think that what happened in 1942 or 1944 during the Japanese occupation in this respect has any material bearing on the issues before me. I must say however that I was not at all impressed by this witness Chua Lye Swee nor by his evidence in many respects. He was an old employee of the deceased and is still employed by the defendant and at the time he lived near Sims Avenue and although he denied knowing the plaintiff prior to June 1942 he did admit to knowing the house where she lived and having seen her and the children. The plaintiff said that she had known him since two years after her marriage to the deceased, and I think that this is probably true and that being an old employee she applied to him for help in obtaining some financial aid from the Custodian and I believe that he accompanied her there. However, she does not know English in which language the letter was typed and I doubt if she appreciated the terms in which the letter was expressed and so long as it was an application for assistance on the grounds specified, that is all she would care about. In no way is it material as regards the earlier facts, which as I have said are not controverted by any evidence for the defence and on which facts I have already expressed my opinion. It remains therefore to apply those facts to the law of marriage in this Colony.

In this connection, Wing Commander the Rev. S. M. Block, senior Jewish Chaplain in the Forces here, gave evidence *de bene esse*, in 1947, in regard to Jewish laws and customs. He stated that he had read the case of *Goldsmid* and *Bromer*[19] and confirmed that the statements therein in regard to Jewish laws and customs were correct to-day.

He stated that a Jew might not marry a non-Jew under any circumstances and any such marriage was repugnant to Jewish law. That such a marriage before a Marriage Registrar could not be prohibited but could not be recognised by Jewish law. Jewish law says that civil law must be adhered to and Jewish law does not interfere with civil status; it is a matter of religion and conscience. Official consent of the family is not normally necessary for a Jewish wedding.

On re-examination he stated "In deciding the status of a wife, consideration can only be taken of two possibilities, viz., the marriage either fulfils the requirements of the civil marriage laws or the requirements of the law and customs of the Jews. If there is no civil marriage, then one must look to Jewish laws and customs."

Both the parties to this alleged marriage were domiciled in the Colony at the time, the ceremony took place here and it is the law of this Colony as to marriage which is applicable. Numerous cases and authorities were quoted to me by both sides during the course of the argument, a list of which I set out in an Appendix to this judgment. Many of such cases were as to the validity of marriages between parties who were both of the same race and religion and of the same domicil and in other cases the parties were of different races, different religions and different domicils but it has not been possible to trace a case exactly on all fours with the present facts and circumstances.

At the conclusion of Mr. Laycock's submissions as to the law applicable I recorded the same verbatim but those can be more briefly summarized as follows :—

(a) That in the absence of local statutory provisions covering Jewish marriages, the Jewish marriage rites, ceremonies and customs must be considered as having the form of effective law in this Colony.

(b) That, accordingly the deceased could only contract a lawful marriage here by complying with such Jewish marriage laws.

(c) That he was personally incapacitated thereby from contracting a valid marriage as alleged.

In support of these submissions, Mr. Laycock quoted at length from the judgment of Sir William Scott in the cases of *Lindo v. Belisario*[18] and

Goldsmid v. Bromer[19]. Both of these cases were decided in the Consistory Court at the end of the 18th century and in both the cases, the parties were Jews. Detailed evidence was taken as to Jewish marriage rites and customs and decisions given thereon. They were decided long before Lord Hardwicke's Marriage Act and there was no civil law then providing for dissolution of marriage and cognate matters.

Mr. Mallal also adopted *Lindo v. Belisario*[18] as supporting the plaintiff's case and I therefore quote certain passages from the judgment.

At page 535 (Eng. Rep. Vol. 161) Sir William Scott stated :—

> The opinions which have divided the world, or writers at least, on this subject, are, generally, two. It is held by some persons that marriage is a contract merely civil, by others, that it is a sacred, religious, and spiritual contract, and only so to be considered. The jurisdiction of the Ecclesiastical Court was founded on ideas of this last described nature; but in a more correct view of this subject, I conceive that neither of these opinions is perfectly accurate. According to juster notions of the nature of the marriage contract, it is not merely either a civil or religious contract; and, at the present time, it is not to be considered as originally and simply one or the other. It is a contract according to the law of nature, antecedent to civil institution, and which may take place to all intents and purposes, wherever two persons of different sexes engage, by mutual contracts, to live together.
>
> But when two persons agree to have that commerce for the procreation and bringing up of children, and for such lasting cohabitation, that, in a state of nature, would be a marriage, and in the absence of all civil and religious institutes, might safely be presumed to be, as it is popularly called, a marriage in the sight of God.
>
> It has been made a question how long the cohabitation must continue by the law of nature, whether to the end of life? Without pursuing that discussion, it is enough to say that it cannot be a mere casual and temporary commerce, but must be a contract at least extending to such purposes of a more permanent nature, in the intention of the parties. The contract, thus formed in the state of nature, is adopted as a contract of the greatest importance in civil institutions, and it is charged with a vast variety of obligations merely civil. Rights of property are attached to it on very different principles in different countries. In some there is a **communio bonorum**. In some each retain their separate property. By our law it is vested in the husband. Marriage may be good independent of any considerations of property, and the **vinculum fidei** may well subsist without them.
>
> In most countries it is also clothed with religious rites, even in rude societies, as well as in those which are more distinguished for their civil and religious institutions. Yet in many of those societies, as I have had occasion to observe, they may be irregular, informal, and discountenanced on that account, yet not invalidated. Scotch marriages have been mentioned. The rule prevailed in all times, as the rule of the canon law, which existed in this country and in Scotland, till other civil regulations interfered in this country; and it is the rule which prevails in many countries of the world, at this day, that a mutual engagement, or betrothment, is a good marriage, without consummation, according to the law of nature, and binds the parties accordingly, as the terms of other contracts would do, respecting the engagements which they purport to describe. If they agree and pledge their troth to resign to each other the use of their persons, for the purpose of raising a common offspring, by the law of nature that is complete.

In *Goldsmid v. Bromer*[19], again, both the parties to the alleged marriage were Jews and after evidence had been taken as to the alleged marriage of a young Jewish girl of 16, such marriage was held to be invalid and void on account of the Jewish law requiring two competent witnesses not having been complied with.

I know of no case, and none was quoted to me, as an authority for saying that in the case of a Jew and non-Jew contracting a marriage, the marriage laws and customs of the Jews prevail and must be complied with, nor was any case quoted to me as an authority for saying that a Jew was legally incapacitated from contracting such a marriage by reason of his religion.

As the Rev. Block says, a marriage of a Jew to a non-Jew is repugnant to Jewish law but Jewish law and customs do not over-ride Civil Law and do not interfere with civil status; "it is a matter of religion and conscience".

The nearest case to the existing facts which was quoted was that of *Carolis de Silva v. Tim Kim*[36]. This was a case of a Singhalese man and a Chinese woman intending marriage went through a certain ceremony which, as a Chinese marriage ceremony might have been imperfect, followed by a feast. They subsequently lived together with the habit and repute of matrimony until the husband's death and a child was born and registered by the husband as his own. They were both British subjects of different race and different customs and had been born in different cults. It was held that the marriage was lawful. Jenkins, J.C., said that registration of the marriage in Ceylon was a matter of local procedure and "as to whether a Singhalese Buddhist can marry outside Ceylon or not is, I apprehend, merely a question for his ecclesiastical law, and also immaterial".

Another local case to which I might refer is that of *Er Gek Cheng v. Ho Ying Seng*[48] decided last June by the learned Chief Justice and although it was a question of the validity of a marriage between Chinese, some passages in the judgment are relevant. He states :—

> "The legal requirements for marriage with a t'sai and t'sip are, I think, the same. This means that the law of this Colony merely requires a consensual marriage, that is, an agreement to form a relationship that comes within the English definition of marriage. It is no longer any part of that

conception that such a relationship must be life-long. It merely means one of indefinite duration as distinct from one for a definite period as is allowed amongst Moslems.

"The consensual conception of marriage was originally, in my opinion, that of the common law of England, but I shall now explain how in England the position has been obscured."

His Lordship dealt with historical matters and concludes this part as follows :—

"I think that it is only on the basis of consensual marriage that the Courts can have regarded the validity of Jewish marriages before there was any statutory provision for them. This the Courts in England certainly did. They professed to treat the matter as one of foreign law. But in the case of marriages between British subjects, domiciled in England, this could not have been the case I think in these cases the observances of rites and ceremonies is merely evidence of intention. As with us, the use of Hindu marriage ceremonies is not a matter of legal requirements, it is merely evidence."

It was not suggested that both the plaintiff and deceased were not domiciled in the Colony and there is abundant evidence to show that in fact both of them were so domiciled. The law applicable is therefore that of this Colony.

A contract to marry has been defined (*Halsbury* Vol. XVI. p. 552, Sections 813 and 814) as "a contract between a man and a woman by which they mutually promise to marry one another, the promise of each being the consideration for the promise of the other". Such contract need not be evidenced in writing nor the mutual promises be made in express terms. The conduct of the parties may justify the inference of such mutual promises.

A marriage is valid if each of the parties has according to the law of his or her respective domicil the capacity to marry and the marriage is celebrated in accordance with the local form or in other recognised form (*Dicey* 5th Edn. p. 732. Rule 182).

At the date of this ceremony in 1937 there was no local Ordinance dealing with marriage in force except the Christian Marriage Ordinance; Chapter 82 which is wholly inapplicable to the present facts and circumstances, as neither party was a Christian. This Ordinance was repealed by Ordinance 13 of 1940 which came into force on the 1st January 1941 and the latter relates to the solemnization of Christian marriages by ministers of religion and their registration. Simultaneously the Civil Marriage Ordinance No. 9 of 1940 was enacted which provided for the solemnization and registration of monogamous marriages by Registrars of Marriage. Mohammedan marriages were expressly excluded from the operation of this Ordinance.

It was not suggested that Chinese were not polygamous but it was suggested that Jews are monogamous but there was no evidence before me to this effect apart from an *obiter dicta* by Brown, J. in *Meyer v. Meyer*[38]. It is, I think, not really material but I was always under the impression that amongst Jews polygamy was permitted, as illustrated in the Old Testament. There are many local cases, approved by the Privy Council, upholding the validity of marriages between a Chinese husband and a varying number of *t'sips,* i.e., secondary wives. although there is a *t'sai,* i.e. principal wife living at the time. What is clear is that both parties to the ceremony were non-Christians and that at the relevant date there was no local law dealing with marriage between non-Christians or for registration of such marriages. Neither is the marriage impugned on account of either party having been previously married or of having any other spouse, living at the relevant date.

In my opinion the whole matter is one of a consensual marriage, i.e., a matter of contract.

Neither party was incapacitated in law or otherwise from entering into such a contract and there is abundant evidence to shew not only that such contract was entered into but that the same was fulfilled and carried out right down to the date of the death of one of the parties.

My answer to the questions raised on the issues is therefore that the petitioner Tan Soo Eng is the lawful widow of Abraham Penhas and that the said Tan Soo Eng married the said Abraham Penhas on or about the 22nd December 1937.

I have not been specifically asked to decide the question of costs of this issue but I think that, the costs of this issue should come out of the estate and there will be an order accordingly. I certify for two Counsel on both sides.

Judgment for the plaintiff.

APPENDIX.

(1) Civil Code — Republic of China, at p. 254, para. 980.

(2) Dicey — 5th Edn. p. 732, R. 182, p. 641, R. 159.

(3) Dicey — 6th Edn. p. 223/4 and note 57.

(4) Best on Evidence 12th Edn. at p. 309. "So the law...."

(5) Eversley on Domestic Relations, 5th Edn. p. 70.

(6) Legal Status of the Malay States. Braddell, p. 165.

(7) Local Marriage Ordinances.

(8) Harwoods Ordinances S. S. 1867 — 1877, Vol. 1. p. 11.

(9) Woods Oriental Cases (1867. p. 30/31. Chulas v. Kolson).

(10) Woods Oriental Cases — Appendix. *Choa Choon Neo v. Spottiswoode* at p. 8/9. "In this Colony....."

(11) Code of Jewish Law. Cap. XLV. p. 6 and para. 3. S. 11, S. 18, 19.

(12) S. S. Ordinance. Cap. 82 (Repealed) S. 3.

(13) S. S. Ordinance 9. 1940. (Civil Ord.).

(14) S. S. Ordinance 10. 1940.

(15) *Brinkley v. A. G.* — (1890) 15 Probate p. 76.

(16) *Piers v. Piers* 9 E.R. 1118, H/N. L/C. at 1129. 2nd para: approved in Sastry Aronegay 6 A.C. 364 at 372.

(17) *Vowles v. Young* 33 E.R. p. 247.

(18) *Lindo v. Belisario* 161 E.R. at 535.

(19) *Goldsmid v. Bromer* 161 E.R. p. 568.

(20) *Brook v. Brook* — 11 E.R. p. 1292, p. 709.

(21) *Conway v. Beasley* — 162 E.R. p. 1292, 1297.

(22) *Despatie v. Tremley* (1921) A.C. p. 702.

(23) *Sottomayer v. de Barros* 3 Probate Div. at p. 5.

(24) *Sottomayer v. de Barros* 5 Probate Div. 94 — see p. 99/100 and p. 101, 102, 103.

(25) *Chetti v. Chetti* (1909) Probate Div. 67.

(26) *Rex v. Hammersmith Regr.* (1917) 1 K.B. p. 634.

(27) *Jones v. Robinson* 161 E.R. 1146.

(28) *In re De Wilton* (1900) Ch. 481 at 488 and 490.

(29) *Ogden v. Ogden* (1908) Probate Div. 46 at 58/60.

(30) *Goodman v. Goodman* (1859) 23 L.J. (N.S.) 745.

(31) *Regina v. Willans* 3 Kyshe p. 25 last paragraph.

(32) *Bethell's Case* 38 Chancery at p. 217, 234.

(33) *Petronella Case* (1926) A.C. at 543.

(34) *Petronella Case* (1930) A.C. at 349, 352.

(35) *Cheang Thye Phin v. Tan Ah Loy* — (1920) A.C. p. 369.

(36) *Carolis de Silva v. Tim Kim* — (1905) 9 S.S.L.R. at p. 8, 12.

(37) *Kow Heng Chow v. Lay Mee Yin* — (1948) M.L.J. 157.

(38) *Meyer v. Meyer* (1927) S.S.L.R. p. 1 and 4.

(39) *Yeap Cheah Neo v. Ong Cheng Neo* 6 P.C., p. 381 (1875) at 385/6, 392/3, 394, 396, 397.

(40) *Choo Eng Choon deceased* XIII S.S.L.R. (1911) p. 120 (*Six Widows case*) at 153, Law, C.J., 578/8, 160, 161/2, 192, 208, 209/10, 212.

(41) *Cheang Thye Phin v. Tan Ah Loy* (1920) A.C. 369 at 374/5, 376 (approving *Six Widows case*).

(42) *Khoo Hooi Leng v. Khoo Hean Kwee* (1926) A.C. 529 at 533, 537.

(43) *Khoo Hooi Leng v. Khoo Hean Kwee* (1930) A.C. at 346.

(44) *Soon Voon Sen v. Ang Kion Hee* (1933) S.S.L.R. 380 (1924 case).

(45) *Tay Geok Teah* S.S.L.R. 1934, p. 88.

(46) *Chia Teck Leong v. Estate Trust Company* (1939) S.S.L.R. p. 94. Horne J. at p. 104/5, 106.

(47) *Rex v. Teo Kim Choon* (1948) M.L.J. p. 145.

(48) *Estate of Yeo Kian Kee deceased* (1949) M.L.J. June 1949. p. 171, at 172, 2nd column.

NOTES OF CASES.

FEDERATION.

Criminal Procedure Code Ss. 294 and 317 — Opium and Chandu Proclamation (Amendment) Ordinance, 1948, S. 4 — Opium and Chandu Proclamation (49 of 1946) Ss. 3 and 4.

In the first case the respondent was convicted of possession of 95 packets of chandu in contravention of S. 3(1) of the Opium and Chandu Proclamation (No. 49 of 1946) and bound over in the sum of $100/- for 12 months with one surety. In the second case the respondent was convicted of possession of one piece of raw opium in contravention of the same statutory provision and similarly bound over. In both cases the Public Prosecutor appealed on the ground that, having regard to the facts of the case and the penalties provided by law, the sentences imposed were manifestly inadequate.

Held, (Thomson, J.), that the provisions of S. 294 of the Criminal Procedure Code do not allow any Court to go to the length of saying that in every case of a first offender the antecedents of the convicted person are necessarily such as to make it expedient to bind him over. Each individual case must be considered on its own merits and must be examined with a view to ascertaining whether, having regard to any of the matters mentioned in S. 294 of the Criminal Procedure Code, binding over is in all the circumstances of the case expedient. Case sent back for further evidence in each case relative to the question of sentence as may be tendered by the prosecution or the defence.

Rennie v. Boardman, 111 L.T.R. 713 at page 715 was referred to.

M. G. Neal for the Public Prosecutor; **M. S. Mahendran** for the Respondents.

Public Prosecutor v. Lim Guan Hock and Public Prosecutor v. Boo Swee Kim (Perak Criminal Appeal Nos. 38 and 39 of 1949). Decided on August 2, 1949.

Opium and Chandu Proclamation (No. 49 of 1946), Ss. 3, 5 and 18 — Common Gaming Houses Enactment, S. 4(a) — Meaning of "occupier".

In this case the 3 appellants, together with one Kuah Thian Chye who absconded, were charged jointly with the possession of one pan containing some 19 tahils of chandu which was being prepared in a room at No. 17 Hale Street, Ipoh, at about 4.00 a.m. on the 17th May, 1949. They were convicted and sentenced to various terms of sentences. The second appellant, who lived in the room, only appealed against his sentence.

The main argument of the appellants' Counsel, Mr. H. T. Ong, was that the word "occupier" in S. 3(2) of Proclamation No. 49 of 1946 meant a person who was in legal occupation or lived on the premises, or that part of the premises, and habitually resided there. Mr. M. G. Neal who appeared for the Public Prosecutor supported the judgment of the learned President of the Sessions Court who, in his judgment, said: "I consider that all persons who are found in a room at a time when a raid is made are "occupiers" for the purpose of S. 3(2), Opium and Chandu Proclamation No. 49/46. The word "occupier" is not defined. In Section 5(i)(b) "occupier" certainly appears to mean a person who has some right to remain on premises for some length of time and would exclude a mere visitor. Occupier in Section 3, however, I consider to be a term sufficiently wide to include not only a tenant but also a licensee or even a trespasser. To put the matter in a nutshell the effect of Section 3(2) is to place upon any person found in the immediate locality of any opium or chandu, the duty of proving his innocence to the satisfaction of the Court. See Sec. 18(i)."

Held, (Paul Storr, J.), that as the appellants were discovered in a closed room in a closed house, out of which room the 1st appellant emerged on the entrance of the Customs officials at 4.00 a.m., they were rightly held by the learned President to be occupiers of that room, and that, therefore, as chandu was found in that room the presumption under Section 3(2) arose as against them all.

Choo Ah Tee v. Public Prosecutor 1 F.M.S.L.R. 197 distinguished.

H. T. Ong for appellants Nos. 1 and 3; **M. G. Neal** for the respondent.

Ong Eng Soo & 2 Ors. v. Public Prosecutor (Ipoh Cr. App. No. 49 of 1949). Decided on August 23, 1949.

Criminal Procedure Code, S. 399 — Penal Code S. 420 — Handwriting expert — Evidence of — Admissibility of.

In this case the appellant was convicted of the offence of cheating one L. C. Doshi of the firm of C. J. Doshi & Co., Kuala Lumpur, and thereby dishonestly inducing the said L. C. Doshi to deliver to him five fountain pens, contrary to S. 420 of the Penal Code. The prosecution evidence **inter alia** was that the appellant entered the firm's shop and received five Parker fountain pens in return for what was described as "local purchase form". This form was headed "Government of Selangor" and reads as follows:—

> "To Messrs. C. J. Doshi & Co., Mountbatten Road, Kuala Lumpur.
>
> Please supply the undernoted articles on behalf of the Government and forward Bill to me with the goods."

Then followed a description of the goods and it was signed with a signature which was indecipherable over an imprint of a rubber stamp which reads "Malay Educational, Kuala Lumpur."

Amongst other evidence the prosecution put in a report of the Acting Director of Chemistry, Malaya, who stated therein that in his opinion the purchase form was in the handwriting of the appellant.

Held, (Russell, J.), that in view of the qualifications of the Acting Director of Chemistry as handwriting expert, he could have been called as an expert witness in handwriting, but whatever his qualifications, a report by him on handwriting cannot be put in evidence under S. 309 of the Criminal Procedure Code. Appeal Dismissed.

R. P. S. Rajasooria for the appellant; **H. Shepherd (D.P.P.)** for the respondent.

Mohamed Nor bin Hamzah v. Public Prosecutor, (K.L. Sessions Court Cr. Case No. 566 of 1948). Decided on August 18, 1949.